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8 **UNITED STATES DISTRICT COURT**

9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 PRINCE, LLC, DBA
11 PINOCCICHIO IN THE DESERT,
12 an individual California company,

13 Plaintiff

14 v.

15 NATIONWIDE INSURANCE
16 COMPANY, aka NATIONWIDE
17 GENERAL INSURANCE
18 COMPANY, an Ohio corporation;
19 and DOES 1 THROUGH 5,
20 inclusive,

21 Defendants.

Case No.:

COMPLAINT FOR:

- 22 **1. DECLARATORY JUDGEMENT**
- 23 **2. BREACH OF CONTRACT**
- 24 **3. BREACH OF THE IMPLIED**
- 25 **COVENANT OF GOOD FAITH AND**
- 26 **FAIR DEALING**

DEMAND FOR JURY TRIAL

27 Plaintiff brings the following causes of action against Defendants.
28

1 **I. FEDERAL JURISDICTION**

2 1. Plaintiff alleges the amount in controversy in this action exceeds
3 \$75,000. Because Plaintiff is a California resident and Defendant Nationwide
4 Insurance Company aka Nationwide General Insurance Company is an Ohio
5 corporation. This court has **diversity jurisdiction** over this matter under 28
6 U.S.C section 1332.
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9 **II. THE PARTIES**

10 **A. Plaintiff**

11 2. Plaintiff Prince, LLC dba Pinocchio in the Desert (“Plaintiff”) is a
12 California LLC which owns and operates a dine-in restaurant located in Palm
13 Springs, California. Plaintiff purchased a comprehensive business policy or
14 “Premier Businessowners Policy” from Defendants, policy number APC BPF
15 7832475759, which is the policy at issue in this lawsuit.
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19 **B. Defendants**

20 3. Defendant Nationwide Insurance Company aka Nationwide General
21 Insurance Company (“Nationwide”) is an Ohio corporation which regularly and
22 systematically does business in this jurisdiction.
23

24 4. The true names and capacities, whether individual, corporate,
25 associate, or otherwise, of Defendants sued here in as DOES 1 through 5,
26 inclusive, are currently unknown to Plaintiff, who therefore sues such
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1 Defendant(s) by such fictitious names. Plaintiff is informed and believes, and
2 based thereon alleges, that Defendants designated herein as a DOE are legally
3 responsible in some manner for the unlawful acts referred to herein. Plaintiff will
4 seek leave of court to amend this complaint to reflect the true names and
5 capacities of the Defendants designated hereinafter as DOES when such identities
6 become known. Nationwide and DOE Defendants are hereinafter referred to as
7 “Defendants.”
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11 **II. GENERAL ALLEGATIONS**

12 5. This is an insurance coverage action based on Defendants’ denial
13 of coverage for business interruption to Plaintiff caused by the COVID-19
14 government shutdown.
15

16 6. In January 2020, media reports began to document an outbreak of a
17 novel strain of coronavirus called COVID-19 in China. By late January, it was
18 generally understood in the scientific and public health communities that COVID-
19 19 was spreading through human-to-human transmission and could be transmitted
20 by asymptomatic carriers. On January 30, 2020, reports of the spread of COVID-
21 19 outside China prompted the World Health Organization to declare the COVID-
22 19 outbreak a “Public Health Emergency of International Concern.”
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1 7. Beginning in late February, public health officials with various
2 governments around the world began advising that population-wide social
3 distancing was needed to stop the transmission of COVID-19. Suddenly schools,
4 offices, public transit, restaurants, bars, music venues, and retail shops were likely
5 to become hot spots for local transmission of COVID-19.
6
7

8 8. In mid-March of 2020, California became one of the first states to
9 order widespread closures of non-essential businesses. On March 12, 2020,
10 California's Governor, Gavin Newsom, issued a statewide directive known as the
11 Safer at Home order, which stated: "All residents are to heed any orders and
12 guidance of state and local public health officials, including but not limited to the
13 imposition of social distancing measures, to control the spread of COVID-19."
14
15

16 9. On March 19, 2020, California's "Stay at Home" order instructed all
17 40 million California residents to remain at home, with certain exceptions. This
18 mandate essentially ended in-house service at California retailers and restaurants.
19 The Governor then issued another series of mandates requiring restaurants and
20 retailers to cease in-person services, though curbside sales or by delivery were
21 permitted.
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1 10. Plaintiff owns and operates a dine-in restaurant in Palm Springs,
2 California. Plaintiff complied with all applicable orders of California state and
3 local authorities. This resulted in Plaintiff's restaurant being forced to cease
4 operations as a direct result of the Stay at Home order.
5

6 11. Plaintiff alleges compliance with these orders caused direct physical
7 loss to Plaintiff's property in that the property were made useless and/or
8 uninhabitable. Plaintiff alleges its restaurant's functionality and use of its property
9 was severely reduced if not completely or nearly destroyed.
10

11 12. The impact of these orders was felt not simply in their direct
12 application to Plaintiff's operations, but also in their application to neighboring
13 businesses and properties, whose property has suffered similar direct physical loss
14 as a result. Even when California relaxed its mandates for a time, Plaintiff still
15 encountered continued loss of business income due to those orders because
16 government officials continued to state that densely occupied public spaces are
17 dangerously unsafe, and continuing to operate a restaurant such as Plaintiff's in
18 the same manner as before could expose customers workers to the risk of
19 contaminated premises, as well as transmission and infection risks.
20

21 13. This did not merely cause severe financial distress for restaurants and
22 their employees - these closures have threatened the viability of California's entire
23 restaurant industry.
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1 14. Prior to the pandemic, Plaintiff purchased business interruption
2 insurance to protect against a situation like this.
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4 15. Plaintiff bought full-spectrum, comprehensive insurance for its
5 *business* – not just for damage to Plaintiff’s physical premises and equipment.
6 Insurance coverage is important, if not vital for a small businesses. Plaintiff
7 reasonably believed it had comprehensive coverage that would apply to business
8 interruptions under circumstances like these, where Plaintiff had done everything
9 right to protect Plaintiff’s business and the public.
10
11

12 16. Plaintiff purchased comprehensive commercial liability and property
13 insurance policy from Defendants to insure against risks the business might face.
14 This insurance policy includes coverage for loss of business income, as well as
15 additional “civil authority” coverage for extra expense caused by the action of a
16 civil authority.
17
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19 17. Once triggered, the policy pays actual losses sustained for the
20 business income and extra expense coverage. To date, Plaintiff has paid all of the
21 premiums required to keep its policy in full force.
22

23 18. On or about March 28, 2020, Plaintiff reported a loss of business
24 income and otherwise made a claim for coverage under Plaintiff’s policy with
25 Defendants.
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1 19. Dispite collecting premiums for such risks, Defendants categorically
2 denied Plaintiff's claims arising from California's mandated interruption of
3 Plaintiff's business services.
4

5 20. On or about April 2, 2020, Defendants denied Plaintiff's claim for
6 coverage via a cursory denial letter, the majority of which simply quotes the
7 policy.
8

9 21. Plaintiff alleges Defendants' denial was made with little or no
10 investigation and without due regard for the interests of Plaintiff. The coverage
11 denial letter received by Plaintiff rests on an erroneous and misplaced reading of
12 coverage language, and an overbroad reading of the policy's exclusions. Plaintiff
13 alleges this denial letter raises the specter of a bad faith denial.
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16 22. Although Plaintiff's policy also includes civil authority coverage, and
17 while Defendants acknowledge that a civil authority had prohibited access to
18 Plaintiff's premises, Defendants still wrongfully denied coverage.
19

20 23. Defendants' denial letter, on information and belief, appears to be a
21 form letter sent in response to business interruption claims arising from
22 California's Stay at Home orders. Defendants' denial is contrary to the terms and
23 conditions of the policy and applicable law, which gives effect to plain language,
24 construes ambiguity in favor of coverage, and narrowly construes exclusions, the
25 applicability of which insurers have the burden of proving.
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1 24. Defendants' denial of coverage breached its obligation and
2 responsibility to provide coverage available through the policy to Plaintiff due to
3 Plaintiff's covered loss of business income because its premises were unusable
4 and uninhabitable and had essentially lost all function as a dine-in restaurant. As a
5 result, Defendants' denial of coverage and breach of the insurance policy it issued,
6 Plaintiff has suffered and will continue to suffer damages. A declaratory
7 judgment determining that the coverage provided under the policy and an order
8 that such coverage is owed will prevent Plaintiff from being wrongfully left
9 without vital coverage acquired to ensure the survival of its businesses in these
10 circumstances. As a result of the Stay at Home orders, Plaintiff has incurred and
11 continues to incur a substantial loss of business income and additional expenses
12 covered under the policy. Plaintiff reserves the right to amend this complaint to
13 allege additional damages should the government issue additional orders which
14 also limit the use and functionality of Plaintiff's business.

15 25. Plaintiff thus brings this action seeking declaratory relief, insurance
16 coverage owed under its policy, and damages.

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23 **III. CAUSES OF ACTION**
24 **FIRST CAUSE OF ACTION**
25 **Declaratory Judgment**
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27 26. Plaintiff re-alleges the paragraphs above as if fully set forth herein.
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1 27. Plaintiff purchased a comprehensive business insurance policy from
2 Defendants.

3
4 28. Plaintiff paid all premiums required to maintain its comprehensive
5 business insurance policy in full force. The comprehensive business insurance
6 policy includes provisions that provide coverage for the direct physical loss of or
7 damage to the premises as well as actual loss of business income and extra
8 expenses sustained during the suspension of operations as a result of such loss or
9 damage.
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11
12 29. On or about March 19, 2020, California issued the Stay at Home
13 order mandating that all Californians remain at home, with certain exceptions.
14 This mandate required retailers to cease all non-essential services. This mandate
15 also applied to neighboring businesses, thus causing widespread closures
16 surrounding Plaintiff's business premises.
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19 30. As a result of this mandate, the covered property of Plaintiff lost
20 some or all of its functionality and/or became useless or uninhabitable, resulting in
21 substantial loss of business income.
22

23 31. These losses are insured losses under several provisions of Plaintiff's
24 comprehensive business insurance policy including business income and expense
25 coverage, and coverage for civil authority orders.
26

27 32. There are no applicable, enforceable exclusions or definitions in the
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1 insurance policies that reasonably preclude coverage for these losses.

2 33. WHEREFORE, Plaintiff seeks a declaration that its business income
3 losses are covered and not precluded by exclusions or other limitations in
4 Plaintiff's comprehensive business insurance policy with Defendants.
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7 **SECOND CAUSE OF ACTION**

8 **Breach of Contract**

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10 34. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

11 35. Plaintiff purchased a comprehensive business insurance policy from
12 Defendants to insure against all risks (unless specifically excluded) a business
13 might face.
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15 36. This policy was a binding contract that afforded Plaintiff
16 comprehensive business insurance under the terms and conditions of the policy.
17 Plaintiff met all or substantially all of its contractual obligations including paying
18 all the premiums required by Defendants.
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21 37. On or about March 19, 2020, California issued the Stay at Home order,
22 mandating that all Californians remain at home, with certain exceptions. This
23 mandate required restaurants, including the one owned by Plaintiff, to cease all in-
24 person services. This mandate also applied to neighboring businesses, thus causing
25 widespread closures surrounding Plaintiff's business premises.
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1 38. Beginning on about March 19, 2020, and continuing through the date
2 of the filing of this Complaint, Plaintiff suffered and continues to suffer the direct
3 physical loss of property and lost business income following California's Stay at
4 Home order—losses which were covered under the comprehensive business
5 insurance policy Plaintiff purchased from Defendants.
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8 39. There are no applicable, enforceable exclusions in Plaintiff's
9 comprehensive business insurance policy that preclude coverage.
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11 40. Defendants breached its contract by denying comprehensive business
12 insurance coverage to Plaintiff.

13 41. As a direct and proximate result of Defendants' denial of
14 comprehensive business insurance coverage to Plaintiff, Plaintiff suffered
15 damages.
16

17 42. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and similarly
18 situated retailers that Defendants breached its contracts with Plaintiff; and (b)
19 corresponding damages for that breach.
20
21

22 **THIRD CAUSE OF ACTION**

23 **Breach of Implied Covenant of Good Faith and Fair Dealing**

24 43. Plaintiff re-alleges the paragraphs above as if fully set forth herein.
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26 44. Plaintiff contracted with Defendants to provide it with comprehensive
27 business insurance to ensure against all risks (unless specifically excluded) a
28

1 business might face.

2 45. This contract was subject to an implied covenant of good faith and fair
3
4 dealing that all parties would act in good faith and with reasonable efforts to
5 perform their contractual duties—both explicit and fairly implied—and not to
6 impair the rights of other parties to receive the rights, benefits, and reasonable
7 expectations under the contracts. These included the covenant that Defendants
8 would act fairly and in good faith in carrying out its contractual obligations to
9 provide Plaintiff with comprehensive business insurance.
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12 46. Defendants breached the implied covenant of good faith and fair
13 dealing by:

14 a. Selling Plaintiff a policy that appears to provide liberal coverage
15 for loss of property and lost business income with the intent of
16 interpreting undefined or poorly defined terms, and ambiguously
17 written exclusions to deny coverage under circumstances foreseen by
18 Defendants;
19
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21 b. Denying coverage for loss of property use and lost business
22 income unreasonably, and without proper cause, by applying
23 undefined ambiguous, and contradictory terms contrary to applicable
24 rules of policy construction and the plain terms and purpose of the
25 policy;
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1 c. Denying Plaintiff's claim for loss of property and loss of
2 business income without conducting a fair, unbiased and thorough
3 investigation or inquiry, arbitrarily and capriciously, and/or with
4 knowledge that the denial was unreasonable under the policy;
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6
7 d. Misrepresenting policy terms; and
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9 e. Compelling Plaintiff to initiate litigation to recover policy
10 benefits to which Plaintiff is entitled.
11

12 47. Plaintiff met all or substantially all of Plaintiff's contractual
13 obligations, including by paying all the premiums required by Defendants.
14 Defendants' failure to act in good faith in providing comprehensive business
15 insurance coverage to Plaintiff denied Plaintiff the full benefit of the bargain.
16

17 48. Accordingly, Plaintiff has been injured as a result of
18 Defendants' breach of the covenant of good faith and fair dealing and is entitled to
19 damages in an amount to be proven at trial.
20

21 49. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and
22 similarly situated retailers that Defendants have breached the covenant of good
23 faith and fair dealing implied in its contract with Plaintiff; and (b) corresponding
24 damages for that breach.
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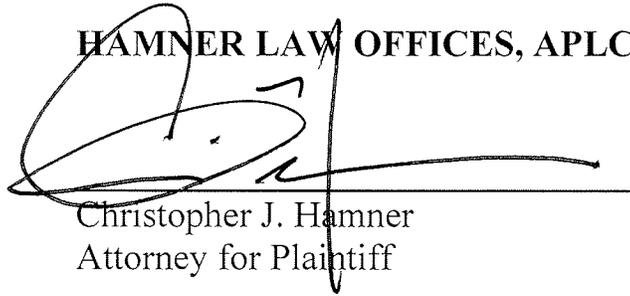
IV. PRAYER FOR RELIEF

50. **WHEREFORE**, Plaintiff requests that the Court enter a judgment awarding the following relief:

- a. A declaration that Plaintiff’s losses are covered under Defendants’ comprehensive business insurance policy; and
- b. Plaintiff also requests damages, attorney’s fees and costs, and such other and further relief as is just and proper as compensation for Defendants’ breach of contract and breach of the implied covenant of good faith and fair dealing.

DATED: July 20, 2020

HAMNER LAW OFFICES, APLC



Christopher J. Hamner
Attorney for Plaintiff